



January 23, 2015

Ben Larson
Compliance Division
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Via overnight delivery and electronic mail to larson.ben@epa.gov

Re: OMB Information Collection Request No. 2020-0003
Diamond Green Diesel, LLC (Company No. 6072)
Confidential Business Information claim for RFS2 submissions

Dear Mr. Larson:

Diamond Green Diesel LLC (EPA Co. ID # 6072), an affected business under EPA's Freedom of Information Act (FOIA) regulations in 40 CFR Part 2, hereby asserts that certain information submitted as required by EPA's Renewable Fuel Standard regulation (40 CFR part 80, subpart M) is Confidential Business Information.

Please note that Diamond Green Diesel did not receive notice in accordance with the procedures described in 40 CFR 2.204 that EPA is required to follow when it is determining whether an affected business's information is entitled to confidential treatment. EPA's FOIA regulation requires that *each* affected business shall be furnished with written notice affording the business an opportunity to comment by certified mail, by personal delivery, or by other means that allows verification of the fact and date of receipt [40 CFR 2.204(e)]. The affected business's receipt of notice serves as the starting point for a fifteen-working day comment period, after which an affected business is presumed to have waived any claim for confidential treatment of its information. In this instance, no such notice was provided to Diamond Green Diesel.

Diamond Green Diesel understands that EPA intends to make uniform final decisions regarding the confidentiality of broad categories of information based on the submissions of those entities that did receive specific notice and any comments received from Diamond Green Diesel or others in response to the Federal Register notice. Diamond Green Diesel appreciates the enormity of the task confronted by EPA in contacting the tremendous number of affected businesses whose confidential information is sought by the Perkins Coie law firm; however, this procedure is not consistent with the requirements of EPA's FOIA regulations. By providing the enclosed comments, Diamond Green Diesel does not waive any right to supplement the enclosed comments; to provide additional information or

responses for EPA's consideration, should we receive notice that EPA intends to release any of our confidential business information; to request reasonable additional time to provide such further responses in accordance with the provisions of 40 CFR 2.204(e)(2); nor to assert deficiency of notice in any later proceedings should Diamond Green Diesel's confidential business information be released improperly.

That said, Diamond Green Diesel has worked diligently to provide the enclosed comments within the short time provided. Please send any future correspondence regarding this matter to my attention, and please do not hesitate to call to discuss or to request clarification of any of the information provided herein.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin Parrish". The signature is fluid and cursive, with a large initial "M" and a stylized "P".

Martin Parrish
President
Diamond Green Diesel

From: (210) 345-2131
 Danielle Butler
 VALERO
 One Valero Way
 San Antonio, TX 78249

Origin ID: SATA



Ship Date: 23JAN15
 ActWgt: 1.0 LB
 CAD: 100472792/NET3810

Delivery Address Bar Code



SHIP TO: (210) 345-2131

BILL SENDER

Mr. Ben Larson - Compliance Div.
Ofc of Transportation & Air Quality
1200 Pennsylvania Avenue NW
U.S. EPA
WASHINGTON, DC 20460

Ref # Elizabeth Bourbon
 Invoice #
 PO #
 Dept #

MON - 26 JAN 10:30A
PRIORITY OVERNIGHT

TRK# 7726 9380 1114
 0201

20460
 DC-US
 IAD

XC RDVA



537J18F15EE4B

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

**Perkins Coie FOIA Request for RFS2 Submissions
Comments of Diamond Green Diesel, LLC regarding CBI**

In a Federal Register notice published December 11, 2014, EPA invited affected businesses whose confidential business information is sought by a FOIA requestor to demonstrate why their information should be protected from disclosure. As suggested in the Federal Register notice, Diamond Green Diesel, LLC (hereafter "DGD") has provided responses to each of the eleven questions listed for each category of information identified in the Federal Register notice, with reference to specific data elements within each category as appropriate.

Transactional Information Contained in EPA's Moderated Transaction System

DGD has submitted certain transactional information contained in EPA's Moderated Transaction System subject to a request that this information be maintained as CBI. In response to EPA's solicitation of comments regarding whether each category of information included in this transactional information meets the criteria for CBI protection, DGD offers the following:

RIN trades

DGD requests that its Trading Partner Identifying Information and information pertaining to its Compliance Activity (data elements "c." through "y." (inclusive) of the pertinent section of EPA's request) be maintained as confidential for the reasons set forth below.

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

DGD requests that this information be maintained as confidential indefinitely.

2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

First, the RFS2 program is a long-term program under which information submitted pursuant to the regulations by an obligated party does not become "stale" in the sense suggested by the question. Second, public disclosure of information concerning DGD's RIN trades would allow customers or competitors to gain unfair insight into DGD's operations and bargaining position, leading to unfair leverage in negotiating pricing and other terms. Specifically, public disclosure of batch volumes would provide competitors with unfair insight into the DGD plant's design, production capabilities, and utilization. Disclosure of information regarding pricing, whether on a per-RIN or per-gallon basis, would jeopardize DGD's commercial interests and negotiating position. Further, disclosure of the Trading Partner Identifying Information would irreparably harm DGD's

relationship with its relevant business partners. Other than DGD's name as a renewable fuel producer, DGD considers the names of the parties involved in a RIN trading transaction, our business partners, and other relevant identifying information to be CBI.

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?

DGD maintains the confidentiality of this information by not releasing it outside of the company except to the EPA as required by the RFS2 regulations. Distribution of this information is limited to those involved in this aspect of the business.

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.

None of the data elements included in this category for which CBI is claimed are contained in any publicly available material.

5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

This information is not released to the public and DGD is not aware of any means by which a member of the public could obtain access to the information. This information is not of a kind that DGD would customarily release to the public.

6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

DGD is not aware that any governmental body has previously made a confidentiality determination regarding this information.

7. For each item or category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

Public disclosure of information concerning DGD's RIN trades would allow customers or competitors to gain unfair insight into DGD's operations and bargaining position, leading to unfair leverage in negotiating pricing and other terms. Specifically, public disclosure of batch volumes would provide competitors with unfair insight into the DGD plant's design, production capabilities, and utilization. Disclosure of information regarding pricing, whether on a per-RIN or per-gallon basis, would jeopardize DGD's commercial interests and negotiating position. Further, disclosure of the Trading Partner Identifying Information would irreparably harm DGD's relationship with its relevant business

partners. Other than DGD's name as a renewable fuel producer, DGD considers the names of the parties involved in a RIN trading transaction, our business partners, and other relevant identifying information to be CBI.

8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

Submission of this information is mandatory pursuant to the RFS2 regulation.

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

Disclosure of competitively sensitive information that was submitted in response to a regulatory requirement based on a reasonable expectation that it would be maintained as confidential may undermine public confidence in the program and lead to reduced participation in the underlying business activities, which ultimately would lessen the availability to EPA of similar information.

10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).

This information is a commercial secret rather than a trade secret.

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

None.

RIN generation transactions

DGD requests that information pertaining to its RIN generation transactions (data elements "a.", "c.", "d.", "f.", "h.", "j.", and "l." through "y." (inclusive) of the pertinent section of EPA's request) be maintained as confidential for the reasons set forth below.

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

DGD requests that this information be maintained as confidential indefinitely.

2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

In addition to the reasons set forth in DGD's responses to questions #2 and #7 above with respect to the data elements of the "RIN trade" category, which are incorporated by reference herein, DGD requests that the identified data elements with respect to this "RIN generation transactions" category be maintained as CBI because these data elements contain facility-identifying information and specific production information, the public disclosure of which would seriously impair DGD's long-term business strategy. Accordingly, given the CBI sensitivity of the data elements contained in this category, it is appropriate for this information to be maintained as CBI even beyond the life of the RFS2 program.

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?

DGD maintains the confidentiality of this information by not releasing it publicly except to EPA as required by the RFS2 regulations. Distribution of this information is limited to those involved in this aspect of the business; to the extent this information needs to be shared among employees supporting DGD, it is posted on an access-restricted intra-company portal, and databases including this type of information are similarly access-limited. DGD expects the EPA to also treat this information as confidential.

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.

None of the data elements included in this category for which CBI is claimed are contained in any publicly available material.

5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

This information is not released to the public and DGD is not aware of any means by which a member of the public could obtain access to the information. This information is not of a kind that DGD would customarily release to the public.

6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

While DGD is not aware of a previous CBI determination specific to DGD's information, EPA did recognize in its recent revisions to the RFS Quality Assurance Program (79 FR 42078, 42108) that such categories of information are not publicly available and agreed to continue its current practice to "treat as CBI any registration or reported information claimed as confidential, unless a specific determination to the contrary is made in a given

case.” DGD is not aware of any other governmental body that has previously made a confidentiality determination regarding this information.

7. For each item or category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

The data elements in this category include precise information regarding batch volumes, feedstock types and amounts, identification of co-products, and other renewable fuel production information that is proprietary to DGD. If this information were made public, competitors would gain unfair insight into DGD’s operations, marketing, and production process that could enable them to design their own marketing and production programs to undercut DGD competitively. Suppliers and customers would gain insight into DGD’s demand for feedstocks and other commodities used in production that would lead to unfair leverage in negotiating pricing and other deal terms. Further, to the extent the optional fields are utilized to reference supporting documents, these fields could be cross-referenced to match DGD’s transaction reports with those of our counterparties so that transaction details regarding volumes, pricing, and other highly sensitive information could be deduced.

8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

Submission of this information is mandatory pursuant to the RFS2 regulation.

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

Disclosure of competitively sensitive information that was submitted in response to a regulatory requirement based on a reasonable expectation that it would be maintained as confidential may undermine public confidence in the program and lead to reduced participation in the underlying business activities, which ultimately would lessen the availability to EPA of similar information.

10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).

This information is a commercial secret rather than a trade secret.

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

None.